

ORIGINAL**FILED**

10/31/2016

*Ed Smith*CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 09-0688

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October 31, 2016

The Honorable Austin Knudsen, Speaker
Montana House of Representatives
1301 E. 6th Avenue
Helena, MT 59601The Honorable Debby Barrett, President
Montana Senate
1301 E. 6th Avenue
Helena, MT 59601**FILED**

OCT 31 2016

*Ed Smith*CLERK OF THE SUPREME COURT
STATE OF MONTANARe: Montana Supreme Court proposed change to Rule of Professional Conduct 1.18

Speaker Knudsen and President Barrett:

The legislature should take action to stop the Montana Supreme Court's unconstitutional program that taxes the clients of lawyers and spends the money on preferred nonprofit groups.

By judicial fiat, the Court has created the Interest on Lawyer Trust Accounts ("IOLTA") program, which targets client money in lawyer trust accounts. Most private lawyers maintain a trust account, separate from the lawyer's own business bank account, so that the lawyer can manage client money without commingling funds. The need for trust accounts arises frequently in real estate transactions or when cases settle.

The Court's IOLTA program requires a lawyer to deposit client money into an IOLTA interest-bearing trust account, even over a client's objection. IOLTA states, "No client may elect whether his/her funds should be deposited in an IOLTA trust account."

IOLTA requires the banks to turn over at least quarterly the interest earned on the clients' money to a private nonprofit group that the Court selects, currently the Montana Justice Foundation. This foundation then hands out the money to groups and individuals.

When government takes money by force of law, and allocates it to third parties, it amounts to "tax and spending." Under Montana's constitution, this power to "tax and spend" belongs solely to the legislative branch, not to the judicial branch.

Montana Legislature
October 30, 2016
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Our constitution provides clear separation of powers among government branches: "No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted."

The Court now is considering a proposed rule to punish lawyers who fail to file annual certificates proving IOLTA compliance (this certificate is akin to an annual tax return). If a lawyer fails to file the certificate, the proposed rule would suspend the lawyer's law license.

It makes little sense to offer the Court comments on its proposal. If the Court is blind to the fact that it lacks the power to tax and spend, it likely will not be receptive to concerns about enforcement of its unconstitutional program.

Litigation obviously is not practical either. No lawyer wants to sue the Montana Supreme Court in a kamikaze lawsuit asking the Court to declare itself a lawbreaker.

The solution lies with the legislature. Separation of power disputes must be resolved at the highest level, between the affected branches, not by private litigants. Therefore, in the next legislative session, the legislature should exercise its lawful tax and spending authority by cutting the Supreme Court's budget until the Court stops unlawfully taxing and spending our client's money.

Sincerely,



Duncan Scott
On his own behalf

cc: Montana Supreme Court Clerk
Attorney General Tim Fox
Governor Steve Bullock